IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

WP(C).No. 28754 of 2006(W)

PETITIONER:

NJARAKKALA LABOUR CONTRACT
CO-OPERATIVE SOCIETY LTD.NO.T.900,
PLAMMOTTUKADA, THIRUVANANTHAPURAM-695 128,
REPRESENTED BY ITS SECRETARY R. SSAJITHA RANI.

BY ADV. DR.P.S.KRISHNA PILLAI
SRI.H.VINOD
SRI.N.JOHN SAM

RESPONDENTS:

1.KARODE GRAMA PANCHAYATH,
KARODE P.O., VIA.UCHAKKADA, NEYYATTINKARA,
THIRUVANANTHAPURAM, REPRESENTED BY ITS
SECRETARY.

2.K.S. SREEKUMAR, RESIDING AT `UTHRAM'
NALLOORVATTOM, PLAMMOTTUKKADA P.O.,
NEYYATTINKARA, THIRUVANANTHAPURAM.

3.J. SATHYADAS, SUJITHA BHAVAN,
AATTUPURAM, UCHAKKADA P.O., NEYYATTINKARA,
THIRUVANANTHAPURAM.

4.G. VINCENT, EDATHUVILA VEEDU,
ARAYOOR P.O., NEYYATTINKARA,
THIRUVANANTHAPURAM.

5.D. THOMAS, `T.S. VILASOM'
KAMBARAKKARAKKADU, AYIRA P.O..,
NEYYATTINKARA, THIRUVANANTHAPURAM.

6.S.R. YOHANNAN, UCHATHIVALA VEEDU,
MELAMMAMAKAM, MARIYAPURAM P.O.,
NEYYATTINKARA, THIRUVANANTHAPURAM.

7.M. SUDHAKRAN, `S.T. COTTAGE'
KARODE P.O., NEYYATTINKARA, THIRUVANANTHAPURAM.

8.R. THYAGARAJAN, `SASEENDRAM' BUNGLAVE,
PONVILA, AYIRA P.O., NEYYATTINKARA,
THIRUVANANTHAPURAM.

9.K.R. ANIL RAJ, `RATNA VILASOM' BUNGLAVE
PONVILA, AYIRA P.O., NEYYATTINKARA,
THIRUVANANTHAPURAM.

10.K.C. JAYARAJAN, VADAKKEKKARA
PUTHEN VEEDU, EDATHOKONAM, PAYATTUVILA P.O.,
NEYYATTINKARA, THIRUVANANTHAPURAM.

R1 BY ADV. SRI.G.SUDHEER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C)No. 28754 of 2006

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Dated: 7th March, 2007

JUDGMENT

A labour contract co-operative society is the writ petitioner and they impugn Exts.P2 to P10 proceedings of the 1st respondent-Panchayat awarding certain works tendered by the Panchayat to respondents 2 to 10. According to the petitioner-Society, in response to the notification issued by the Panchayat inviting competitive tenders for the execution of works the petitioner-Society submitted tenders offering to do the work at the estimate rates. Ext.P1 is copy of the tender schedule in respect of one work in respect of which tenders were invited by the Panchayat, i.e., maintenance to the compound wall of the Ayurveda Hospital. Exts.P2 to P10 are the resolutions of the Panchayat rejecting the tenders submitted by the petitioner and simultaneously accepting the tenders accepted by respondents 2 to 10. Ext.P11 is copy of the certificate issued by the Assistant Registrar of Co-operative Societies(General), Neyyattinkara showing that the petitioner-Society is eligible for undertaking the work covered by Ext.P1 and Ext.P12 is a similar eligibility certificate issued by the Joint Registrar of Co-operative Societies (General), Thiruvananthapuram evidencing the petitioner's eligibility for undertaking the work. The petitioner contends that estimates for all

these works have been prepared as per the P.W.D. schedule of rates which are much below the actuals at the market rates. Therefore no contractor can honestly and sincerely take up and complete the works to the satisfaction of the concerned officers of the Panchayat by maintaining quality of the work by spending amounts lower than the estimate rates. Honest contractors will normally take up the works only at the higher rates than the estimate rates. On the above reasoning the petitioner contends that getting the works done at below the estimate rates is detrimental to public interest since the finished work will either be incomplete or be inferior in quality. There is no justification for the Panchayat to give a go-by to public interest while accepting the tenders submitted by respondents 2 to 10, it is so alleged. The petitioner submits that they are a registered co-operative society of workers operating within the area of the Panchayat and from the point of view of the members of the petitioner-Society, the Panchayat is the biggest employer in the locality and as a public authority coming within the definition of State under Article 12 of the Constitution, the Panchayat is bound to act legally and reasonably and get its works done at the estimate rates

itself. This is necessary for maintaining the quality of the work which is absolutely necessary on considerations of public interest. It is violating considerations of public interest that works as per Exts.P2 to P10 have been given to respondents 2 to 10. On these averments the petitioner has raised several grounds and filed this Writ Petition seeking the following reliefs:

1) To quash or set aside Exts.P2 to P10;

2) Issue a writ of mandamus commanding the 1st respondent not to get the works mentioned in Exts.P2 to P10 done below the estimate rates fixed by them in the concerned tender documents.

3) Issue a writ of mandamus directing the 1st respondent to accept the offer of the petitioner-Society to execute the works mentioned in Exts.P2 to P10 at the estimate rates fixed by them.

2. On behalf of the Panchayat, the 1st respondent, the Secretary has filed a detailed counter affidavit denying the contention that the Writ Petition is not maintainable and denying the allegations and averments contained in the Writ Petition. It is contended that the decision of the Panchayat is appealable as per Section 276 of the Kerala Panchayat Raj Act. It is claimed in the counter affidavit that

works were awarded by the Panchayat to respondents 2 to 10 after complying with all the formalities contemplated in Kerala Panchayat Raj(Execution of Public Works) Rules, 1997. Ext.R1(a) is copy of the notification inviting competitive tenders published in Kerala Kaumudi Daily. Referring to sub-rule (12) of Rule 10 of the said Rules, it is contended that lowest tender shall be accepted by the Panchayat. Accordingly, it is contended that there is no illegality or impropriety in accepting the lowest tenders submitted by respondents 2 to 10. The petitioner-Society is described as a 'paper society' and will not come under the definition of a beneficiary committee as per Rule 2(e) of the Rules. Therefore the petitioner-Society cannot claim any priority over the allocation of such works. As regards the apprehension voiced by the petitioner that if the work is executed at rates below the estimate rates, the quality of the work will be very poor, it is contended that the work is sanctioned after preparing the estimate by a technical committee constituted as per Rule 5 of the Rules. The quantity, description of works including the specification as to the usage of cement and other materials and the rate etc. are fixed as evidenced from Ext.P1 tender schedule. The Contractor will have to

execute the work as per the tender schedule. As per Rule 14, the work shall be executed under the direct control and supervision of the Panchayat Engineer or the technical employees empowered by him. The progress and quality of the work shall be inspected and test checked by the Engineer or his assistants. The Engineer and his assistants are liable for the satisfactory completion of the work and he shall inspect the quality of the materials used. There is provision for keeping measurement book in the form specified in Public Works Manual and level field book for every public work. There is provision for check measurements and final bills will be paid only after check measurements are done.

3. Denying the contentions raised in the counter affidavit the petitioner has filed a reply affidavit. It is contended therein that Rule 10 Sub-rule (12) does not insist on accepting the lowest tender for public works. Since acceptance of quotation/tenders quoting rates much below the estimate rates is not in public interest, it is not desirable to accept such tenders. In fact in the reply affidavit the contentions raised earlier are reiterated by the petitioner. Produced along with the reply affidavit is Ext.P13 copy of the estimate for the

work at serial No.1 in the table and it is pointed out that as per Ext.P2 the Panchayat has accepted the tender of the 2nd respondent to undertake that work at the rate of 21.9% below the estimate rates. The said works cannot be executed maintaining the quality and quantity required for the work at so low a rate far below the estimate rate. Being a public authority, the Panchayat is duty bound to utilise its funds without any room for arbitrariness or corruption.

4. Very fervent submissions were addressed before me by Dr.P.S.Krishna Pillai, learned counsel for the petitioner. Mr.Krishna Pillai would refer to Rule 4 of the Kerala Panchayat Raj (Execution of Public Works) Rules, 1997 apart from referring to Rule 3(5) of the said Rules. As regards the argument that the Writ Petition is not maintainable due to non-exhaustion of remedy by way of appeal, the learned counsel would submit that if there is violation of statutory provisions and constitutional provisions, non-exhaustion of an alternate remedy will not stand in the way of this court invoking writ jurisdiction under Article 226 of the Constitution. Mr.Krishna Pillai would rely on the judgments of the Supreme Court in **Tata Cellular v. Union of India** (AIR 1996 S.C. 11) and **Sterling Computers Ltd.**

v. M/s.M. & N. Publications Ltd. (AIR 1996 S.C. 51) in support of his submissions. Mr.G.Sudheer, learned counsel for the 1st respondent-Panchayat referred to Ext.R1(a) and Rules 2, 8, 10, 14 and 15 of the Kerala Panchayat Raj (Execution of Public Works) Rules, 1997. Mr.Sudheer also referred to Section 276(1) of the Kerala Panchayat Raj Act.

5. The Supreme Court in **Tata Cellular v. Union of India** (supra) and **Sterling Computers Ltd. v. M/s.M. & N. Publications Ltd.** (supra) has taken the view that the powers of judicial review will apply to the exercise of contractual powers by Government and local bodies so as to ensure that arbitrariness or favouritism is not displayed by the Government or local bodies in the matter. But at the same time I must remind myself that while exercising judicial review of contracts entered into by the local authority, this court does not sit in appeal over the decision of the local authority. The enquiry by this court shall be directed to the question whether the decision making process of the local authority or the Government body concerned can be said to be vitiated by any violation of statutory rules. The Kerala Panchayat Raj (Execution of Public Works) Rules, 1997 are the

statutory rules which govern execution of public works by local authorities. The claim of the Panchayat that after complying with the formalities as envisaged by Rule 3 and Rule 4 in those Rules, a notification calling for competitive tenders was published in local daily having vide circulation in the locality as per Ext.R1(a) was issued is not seen disputed. It is beyond dispute also, since it is the petitioner's own case that they submitted their tenders in response to Ext.R1(a). Rule 10 deals with acceptance of tenders by the local authority. Sub-rule (12) of Rule 10 is very relevant and I quote the same as follows:

" Subject to sub-rule (14) the lowest tender shall be accepted for every public work:

provided that where the competent authority, on a report that effect by the Secretary endorsed by the Panchayat Engineer, is satisfied that it will not be desirable to accept the lowest tender, the next higher tender may be accepted by rejecting the lowest tender after recording the genuine reasons."

It is not necessary to quote sub-rule (14) since the same is not relevant. Thus the rule is that the lowest tender shall be accepted. The details regarding the tenders are entered in the tender register

and the technical authority, the Panchayat Engineer also has occasion to consider the tenders received. If the Engineer is of the opinion that accepting tenders quoting the lowest rate will be determental, he is to make an endorsement to that effect and upon receiving such endorsement by the Engineer of the Panchayat, the Secretary of the Panchayat is to submit a report before the Panchayat Committee and it is for the Panchayat Committee to take a final decision as to whether the tenders quoting lower than the estimate rates should be accepted or not. The submission of Mr.Krishna Pillai that having regard to the actual cost for execution of the works in the market, it may not be possible for a given contractor to execute the work qualitatively was not totally unattractive. But then, it should be noticed that these are matters which to a considerable extent are technical matters and the Engineer concerned has not chosen to endorse his decision in the matter of works being awarded at the low rates quoted by respondents 2 to 10. Ext.P1 tender schedule gives details regarding the quantity and description of works including specification as to the usage of cement and other materials. The contractor is bound to execute the work as per the tender schedule.

Rule 14 of the K.P.R.(Execution of Public Works) Rules provided that the works shall be executed under the direct control and supervision of the Panchayat Engineer or other technical employees empowered by him and the progress and quality of the work shall be inspected and test checked by them directly and they are either jointly or severally responsible for the satisfactory completion of the work. Sub-rule (2) of Rule 14 provides that the Panchayat Engineer shall inspect and ensure the quality of goods and other materials used for the execution of the work. Sub-rule (1) of Rule 15 provides that a Measurement Book in the form specified in Public Works Manual and level field book shall be used for every public work. Sub-rule (6) of Rule 15 provides that no partial payment or final payment shall be allowed to any contractor without ensuring the quality of the work or not based on the measurements recorded in the measurement book in respect of any work.

6. I have no reason to assume that the Panchayat which should be expected to be more conscious and aware of the public interest involving of its citizenry, will fail in their duties to ensure that the works executed by respondents 2 to 10 are of good quality. The

argument of the petitioner-Society that they are beneficiary committees as per Rule 2(e) of the Rules does not appeal to me. The beneficiary committee for the purpose of the Rules includes a committee elected under sub-rule (2) of Rule 13 by the people of the area who will be benefited by the implementation. Admittedly the petitioner-Society is not such an elected committee, though they may be a Labour Contract Co-operative Society, the members of which are inhabitants of the Panchayat area.

The result of the above discussion is that the Writ Petition will stand dismissed. Parties will bear their respective costs.

srd **PIUS C.KURIAKOSE, JUDGE**